

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

DAMARIS APONTE-RAMOS et al.,

Plaintiffs,

v.

ZOIME ALVAREZ-RUBIO,

Defendant.

CIVIL NOS.
LEAD CASE: 10-2191 (GAG)
MEMBER CASE: 10-1453 (GAG)

ORDER

The State Insurance Fund's Motion to Dismiss pursuant to Eleventh Amendment immunity (Docket No. 58) is **DENIED**. The undersigned agrees with Judge Salvador E. Casellas that applying the Fresenius¹ analysis, the State Insurance Fund is not a arm of the State for Eleventh Amendment purposes. See Joubert-Vazquez v. Alvarez-Rubio, --- F. Supp. 2d --- , 2011 U.S. Dist. LEXIS 1122463 (Oct. 24, 2011).

As Judge Casellas, the undersigned has reviewed the statute that creates the Insurance Fund. See P.R. Laws Ann. tit. 11 §§ (1b-1) - (1b-4). Having done so, it is an undisputed fact that the fund generates its own funds, and any judgment rendered against it will be satisfied from its own funds, and not by the Commonwealth Fisc. Contra Irizarry-Mora v. Univ. of P.R., 647 F.3d 9, 14 (1st Cir. 2011) (holding that University of

¹ Fresenius Med. Care Cardiovascular Res., Inc. v. P.R. and the Caribbean Cardiovascular Ctr. Corp., 322 F.3d 56 (1st Cir. 2003).

Puerto Rico enjoys Eleventh Amendment immunity; 9.6% of the annual Commonwealth general fund is destined to the University; this constitutes 60% of the institutions budget).

The court notes that the present ruling -mandated by Eleventh Amendment jurisprudence- indirectly may impact the Commonwealth treasury, as well as affect the operations of the Fund in meeting its statutory purposes. This, however, is not the only instance of a public corporation being unguarded by the Eleventh Amendment. See e.g., Orria-Medina v. Metro. Bus Auth., 565 F. Supp. 2d 285, 301-02 (D.P.R. 2007) (Bus authority is not an arm of the state); Fresenius supra (Cardiovascular Center is not arm of the state); Metcalf & Eddy, Inc. v. P.R. Aqueduct and Sewer Auth., 991 F.2d 935 (1st Cir. 1993); Riefkohl v. Alvarado, 749 F. Supp 374, 375 (D.P.R. 1990) (Electric Energy Authority not an arm of the state). The present result, however, may be avoided in the future should the Commonwealth Legislative Assembly amend the Fund's enabling act so that it becomes an arm of the State. This, however, is a matter of public policy and not one for the court to opine.

SO ORDERED.

In San Juan, Puerto Rico this 28th day of October, 2011.

S/Gustavo A. Gelpi
GUSTAVO A. GELPI
United States District Judge